IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1851 OF 2007

Rajesh Sabaji Bapedkar. ...Applicant.

Versus

The State of Maharashtra ...Respondent.

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Ms.Trupati Shetty, Adv. for the Applicant.
Mr.K.V.Saste, APP, for the State.

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CORAM : SMT.V.K.TAHILRAMANI,J.

DATED : 29th June, 2007.

P.C.:

1. Heard the learned Advocate for the Applicant and the learned APP for the State.

2. The applicant is seeking bail in C.R.No.423 of 2003 of Andheri Police Station. The said case is mainly under Sections 394, 395, 397, 307 of IPC.

3. It is the prosecution case that the applicant along with others entered into the jewellery shop of the complainant and committed robbery. At that time they were armed with firearms. The applicant has been identified by

witnesses in the TIP.

4. The learned Advocate for the applicant submitted that there is no recovery at the instance of the applicant. She further submitted that though the applicant may have been identified in the TIP, no specific role has been assigned to him in the memorandum of TIP. As far as this aspect is concerned, it is seen that in the further statements of the witnesses which have been recorded soon after the TIP, the witnesses have mentioned the role of the applicant. It is well settled that not mentioning of the role of the accused in the memorandum of TIP does not affect the prosecution case. Hence, I do not find any merit in this submission.

5. The next submission made by the learned Advocate for the applicant is that the arrest panchnama of the applicant shows that it started at 9:15 p.m. and ended at 11:10 p.m., however, in the remand application the time of arrest is shown as 11:45 p.m.. The learned Advocate for the applicant has submitted that this discrepancy in timing in the arrest panchnama and remand

application shows that the applicant has been falsely implicated in the present case. As far as the remand application is concerned, a person can never be convicted on the basis of any material in the remand application and a person can be tried and convicted only on the basis of the material collected by the investigating agency at the stage of investigation and which material forms part of the charge-sheet. In such case, obviously bail also cannot be granted or rejected on the basis of any averments in the remand application. Hence, I find no merit in this submission.

6. Lastly, it was contended on behalf of the applicant that the applicant has been in custody since 26.11.2003 and coaccused Ikbal Kasam Pathan has been released on bail by this Court and the role of the applicant and that of Ikbal Kasam Pathan being similar the applicant may be granted bail on the ground of parity. As far as this aspect is concerned, the order granting bail to Ikbal Kasam Pathan has not been produced before me. Moreover,, as far as the applicant is concerned, the learned APP states that he was involved in five other cases. The learned

Advocate for the applicant has submitted that the applicant is not involved in five cases, but, he is involved only in three cases which are under Section 420 of IPC. Even assuming that the applicant is involved in only three cases, it is clear that he has antecedents. Hence, looking to all the above facts, I do not think that this is a fit case to grant bail.

7. Application is rejected.

. Trial is expedited. The trial shall be completed as far as possible by 31st December, 2007.

(SMT.V.K.TAHILRAMANI,J.)